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United States Postal Service and Antwon D. Thompson. Case 09–CA–278765

May 22, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

On June 20, 2024, Administrative Law Judge Arthur J. Amchan issued the attached decision. The Charging Party filed exceptions and a supporting brief, the Respondent filed an answering brief, and the Charging Party filed a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions¹ and briefs and has decided to affirm the judge’s rulings, findings,² and conclusions,³ and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. May 22, 2026

James R. Murphy, Chairman

David M. Prouty, Member

¹ In its answering brief, the Respondent urges the Board to disregard the Charging Party’s exceptions, asserting that they fail to comply with Sec. 102.46 of the Board’s Rules and Regulations. We decline to do so. Although the Charging Party’s exceptions do not fully comply with the Board’s Rules, they do not warrant striking, particularly in light of the Charging Party’s pro se status. See generally *A.P.S. Production/A. Pimental Steel*, 326 NLRB 1296, 1297 (1998) (“The Board typically has shown some leniency toward a pro se litigant’s efforts to comply with our procedural rules.”).

² The Charging Party has implicitly excepted to some of the judge’s credibility findings. The Board’s established policy is not to overrule an administrative law judge’s credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ In adopting the judge’s conclusion that the Respondent did not violate Sec. 8(a)(3) and (1) of the Act by putting Charging Party Antwon Thompson on emergency placement leave or by discharging him, we find it unnecessary to pass on the judge’s finding that the General Counsel failed to sustain the initial burden under *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Shay Chandler, Esq., for the General Counsel.
Austin D. Black, Esq. (United States Postal Service Law Office),
of Washington, D.C., for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN Administrative Law Judge. This case was tried in Cincinnati, Ohio, on February 22 and 23, 2024. Antwon Thompson, the Charging Party filed his initial charge on July 26, 2021. The General Counsel issued the complaint on June 2, 2023.

Respondent, which has its headquarters in Washington, D.C., provides postal services throughout the United States, including from its processing and distribution center (P&DC) on Dalton Avenue in Cincinnati, Ohio. The Board has jurisdiction over Respondent pursuant to Section 1209 of the Postal Reorganization Act. The American Postal Workers Union, which represented the Charging Party and the other clerks at the P&DC is a labor organization within the meaning of Section 2(5) of the Act.

The General Counsel alleges that Respondent, the United States Postal Service, violated Section 8(a)(3) and (1) of the Act by putting the Charging Party, Antwon Thompson, on emergency placement leave on May 21, 2021, and discharging him on June 1, 2021, because Thompson assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

According to the General Counsel’s opening statement, the union activity for which USPS retaliated against Mr. Thompson was filing grievances to protest Respondent’s refusal to provide him with a steward in a timely manner.

(1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983). Instead, we find that, even assuming the General Counsel sustained the initial burden, the Respondent met its defense burden of demonstrating that it would have put Thompson on emergency placement leave and discharged him even in the absence of his protected activity. As found by the judge, the Respondent demonstrated that it put Thompson on emergency placement leave in accordance with its zero-tolerance workplace violence policy to investigate his altercation with a manager. Additionally, the Respondent’s testimony and contemporaneous internal documentation establish that it discharged Thompson based on his unsatisfactory attendance and improper conduct. Specifically, the evidence shows that Thompson was absent from work on May 8, 2021, and that he engaged in improper conduct on May 9 and 14, including being away from his assigned machine for a prolonged period and working inefficiently. The evidence further shows that the Respondent’s discharge of Thompson was consistent with its discharge of another probationary employee, who did not engage in protected activity, due to one absence and one instance of improper conduct. In sum, the evidence sufficiently establishes the Respondent would have placed Thompson on leave and discharged him even in the absence of his protected activity. In so finding, however, we do not rely on the judge’s erroneous finding that Thompson was absent from work on May 14.

STATEMENT OF FACTS

USPS hired Antwon Thompson as a non-career employee in November 2020 at the Cincinnati processing and distribution center. That facility has 2 buildings, A and B, which are connected by a skywalk. Big packages are processed in Building B; smaller packages and letters are processed in Building A. Thompson began working in Building B but was soon transferred to Building A and then at times back to Building B. From late March on, Thompson worked almost exclusively in Building A.

Thompson testified that Mustapha Sene, a manager of distribution operations (MDO) on Tour 3, switched him from Building B to Building A in March. When Thompson asked Mustapha Sene about the transfer, Sene, according to Thompson, became irate and replied that Thompson needed to know who the boss was (Tr. 17). This occurred prior to Thompson requesting a Weingarten representative, the first protected activity in which Thompson engaged. If Sene had it in for Thompson prior to the switch, there is no indication in this record why this was so.¹

Sene was not Thompson's direct supervisor, but was the supervisor of Thompson's immediate supervisors, which included Kristen Daniels.² Sene testified that he had little interaction with Thompson except for an incident that occurred on May 21, 2021.

According to Thompson, he was working with Richard Lige on March 24. Lige is a rank-and-file employee, who at times has acted as a union steward. Lige criticized the pace at which Thompson was working. Thompson testified that he asked Lige for a union steward.³ Lige did not respond but, according to Thompson, Lige complained about Thompson to Mustapha Sene. According to Thompson, Sene showed up irate and said Thompson was delaying the mail.

Then, according to Thompson, he asked Sene for a union steward and Sene said he could not have one. Thompson testified that he continued to ask for a union steward every 2 hours.

The next day, March 25, Thompson reported to Building B, asked for a union steward again and met with steward Isaac Howard. Thompson states that on March 25, Sene permanently moved him to Building A effective March 26. Thompson also testified that Sene came to see him on March 25, again irate, and again told Thompson that he needed to know who the boss was.

Thompson also complained that Sene harassed him on March 30, refusing to let him take his break, asking Thompson for his timecard and ID badge. Thompson testified again that he asked for a union steward. Sene would not give him one. At some point, Thompson left the building and went to his vehicle. Later that shift Thompson had a predisciplinary interview (PDI) with supervisor Tina Hill and union steward Art Saturday because he took his break in his car. Thompson states he asked for a steward again and filed a grievance with the help of steward Isaac

Howard.

In Building A, Thompson worked Tour 3, the night shift. On April 24, 2021, Thompson became a USPS career employee.⁴ Since he had not served a year as a non-career employee, he was subject to a 90-day probationary period running from the date he became a career employee.

On May 14, a lead person named Michelle questioned Thompson about the length of his lunch break. According to Thompson, Sene showed up again and started yelling at him. He testified that he asked for a steward again and was ignored.

The next day, May 15, Thompson had a PDI with supervisor Kristin Daniels. Richard Lige acted as the union steward. He was not disciplined for taking an extended lunch break and it is not clear that his lunch break was more than the allotted 30 minutes.

On May 21, Thompson was working overtime processing letters on a machine with co-worker Richard Lige. Sene walked through the area and noticed an open cup with liquid on the machine and a bottle of Gatorade which was closed. It is against USPS regulations for employees to have liquids in working areas. Sene asked Lige whose cup was on the machine. Lige said the cup belonged to Thompson. Thompson denied that but admitted or indicated that the closed bottle of Gatorade belonged to him.

Sene picked up the Gatorade bottle to remove it from the work area. Thompson grabbed it out of Sene's hands. Both testified that the other was highly agitated. Sene called supervisor Darrell Byrd to come to the area to assist him. Thompson testified that he asked for a union steward. He testified that Byrd responded that he had no problem paying Thompson \$12.50. Byrd is Respondent's designee for step 2 of the grievance process. This is his full-time job. \$12.50 is the amount that Respondent routinely pays APWU bargaining unit members when they are not provided a steward within 2 hours of asking for one. This is routine because there are not enough union stewards at the P & DC for Respondent to provide one whenever an employee requests a steward.

Byrd escorted Thompson out of the facility.

The next day, May 22, Thompson had a pre-disciplinary interview (PDI) with Mustapha Sene. Isaac Howard sat in this meeting as Thompson's steward/Weingarten representative. This was Thompson's third PDI. He had one with supervisor Tina Hill on March 21. Although he was accompanied by a union steward, Thompson filed a grievance over not getting one within 2 hours. He also had a PDI with his immediate supervisor, Kristen Daniels, on May 15, concerning his attendance or non-attendance on May 8 and May 14, as well as his work performance (GC Exh. 3, p. 6).⁵

At the end of the May 21 meeting Sene informed Thompson that he was putting him on emergency placement while Sene

¹ The General Counsel at p. 24 of its brief concedes that Sene's hostility towards Thompson began before Thompson engaged in any protected activity. On the other hand, the statement that steward Howard corroborated Thompson's testimony regarding Sene's treatment towards him is not accurate. The testimony at Tr. 148 cited by the General Counsel is that Thompson told Howard that he was being harassed about his work performance. It does not establish that Howard had any independent knowledge that Thompson was being harassed by Sene.

² Daniels was 1 of 12 supervisors reporting to Sene on Tour 3.

³ Lige did not testify.

⁴ Noncareer employees convert to career status by seniority when there is an open career position.

⁵ Daniel's comments about Thompson's work ethic stem in part from her observing his work on May 9 and 14, Tr. 195-200. GC Exh. 3, p. 14 and 15. Daniels also testified that Thompson had a beverage in his work area on May 9, which is against USPS policy. GC 3, p. 15.

investigated his violation of USPS' zero tolerance for workplace violence policy.

Sene told Thompson that he would be advised as to when he could return to work. Thompson never heard from USPS other than being informed by letter dated June 1, 2021, that he was being terminated for attendance issues. Normally, employees who are put on emergency placement are allowed to return to work after a very short period of time.

Thompson's attendance issues

Respondent's records show that Thompson called in sick on May 8. He disputes this.⁶

Thompson testified that on May 14, Lead Person Michelle Lattimore questioned him as to why he was gone from his workstation for 45 minutes. Thompson denied he had been gone that long. He testified he asked for a steward and received no response.

USPS contends that Thompson was absent without permission on May 14.⁷ Thompson says he was at work. He contends that a manual timecard he left at Sene's computer proves this. I find that Thompson has not established that he worked on May 14. The timecard is not dated, and it is not signed by any supervisor. Respondent contends that its time clock was working. Thus, it submits there was no reason for Thompson to submit a manual timecard and if he did, it normally would be signed by a supervisor.

Lack of Available Stewards at the Processing and Distribution Center

Isaac Howard and Art Saturday were the only APWU stewards for the 300–400 employees on tour 3. It was very common for employees not to get a steward within 2 hours of their request, as required by the contract between APWU and Respondent. According to Howard, employees file about 40 grievances per month on this issue. Darryl Byrd testified that this figure was about 25–30 per month, but many more just before Christmas. 48 such grievances were filed in March—April 2021, 2 of which were filed by Antwon Thompson. Many of these were filed by employees at Respondent's Sharonville annex⁸ rather than employees at the P&DC. Most of these grievances were resolved by Respondent paying the employee \$12.50 per a long-standing agreement between Respondent and the APWU.⁹ A large part of supervisor Darryl Byrd's job is settling these grievances for the \$12.50.

Thompson's termination

Kristen Daniels, Thompson's immediate supervisor, terminated him for attendance issues. Daniels signed the termination document on May 24. Mustapha Sene concurred on May 25.

According to Sene, his involvement in the termination was solely to determine whether the reasons were adequately documented. He testified that at the time of his May 21 PDI with Thompson, he did not know that Kristen Daniels was seeking

Thompson's termination but did know that Daniels had a PDI with Thompson on May 15. A termination letter was sent to Thompson on June 1, 2021. (GC Exh. 3, pp. 1 and 5.)

Daniels testified that she requested his termination solely on the basis of his absences on May 8 and 14. She testified that she was unaware that Thompson had filed grievances about not getting a steward in a timely fashion.

Analysis

In order to establish a violation of Section 8(a) (3) and/or (1), the Board generally requires the General Counsel to make an initial showing sufficient to support an inference that the alleged discriminatee's protected conduct was a 'motivating factor' in the employer's decision. Then the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of protected conduct, *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983); *American Gardens Management Co.*, 338 NLRB 644 (2002); *General Motors*, 369 NLRB No. 127 (2022).

This record establishes that Antwon Thompson engaged in protected union activity by requesting a union steward on at least 2 occasions and filing grievances over the fact that he was not provided one in a timely fashion. Respondent was aware of Thompson's protected union conduct. However, I conclude that the General Counsel has not established that Respondent bore animus towards Thompson on the basis of his protected conduct. I also conclude that the General Counsel has not made an initial showing that Thompson's protected conduct was a motivating factor for his termination or being put on emergency placement. More specifically, I find that Respondent's contention that it terminated Thompson for attendance issues is not pretextual, but is, in fact, a reason for his termination. I also find that Thompson was put on emergency placement for his aggressiveness towards Sene on May 21, not his protected activity.

I credit the testimony of Sene and Daniels over that of Antwon Thompson. There is no basis for crediting Thompson's testimony over that of Sene and Daniels, who had successful careers with the Postal Service for several years. Thompson, on the other hand, worked for the Postal Service for about half a year and hasn't worked at all since Respondent fired him in June 2021. Respondent relied only on Thompson's attendance in discharging him. However, the record establishes that his job performance was unsatisfactory and that he violated Respondent's policy regarding keeping drinks in the work area more than once.

There also is an insufficient basis for drawing an inference that Respondent bore animus towards Thompson for seeking a union representative. Employees regularly did so and were regularly paid \$12.50 because Respondent could not comply with the collective bargaining agreement by providing them a steward within 2 hours. There is no evidence upon which I am able to draw an inference that Moustapha Sene or any other USPS manager bore

⁶ Respondent's records of Thompson's time and attendance are GC Exh. 3 p. 9, and GC Exh. 2, p. 45–46.

⁷ The dates in this case are confusing. Thompson may have worked one shift that ended in the early morning of May 14 and then been scheduled to work another shift starting that afternoon or evening.

⁸ A facility just north of the Cincinnati city boundaries.

⁹ Mail Handler unit members, i.e., delivery persons, receive \$22.50 per Respondent's agreement with their union.

animus towards an employee who asked for a Weingarten representative or filed a grievance under the APWU collective bargaining agreement. Darrell Byrd's testimony establishes just the opposite. Paying off union members who did not get a Weingarten representative within 2 hours is simply a cost of doing business.

Mr. Thompson would have one believe that Moustapha Sene and others, e.g. supervisors Kristen Daniels, Michelle Lattimore (who may have been a leadperson), Lorna Cardwell and Tina Hill were out to get him for asking for a union representative and filing a grievance. He would have one believe that Respondent went so far as to fabricate time and attendance records and that several managers and Richard Lige lied in order to get him in trouble. I do not believe any of this. Thompson's protected activity was a routine exercise of his contractual rights that were exercised by many other employees and regularly resolved by Respondent for \$12.50.

As pointed out by the General Counsel's brief, there are irregularities in the manner in which Thompson's employment was handled by Respondent. However, I conclude they are not due

to the fact that he made requests for a union representative or filed grievances. For one thing, if Sene bore animus towards Thompson, it predated Thompson's protected activity. Assuming that some of Respondent's testimony is inaccurate or untruthful, the record does not establish that Respondent bore animus toward Thompson as a result of his requests for a Weingarten representative or filing grievances over this issue. It also does not establish that his discharge or placement on emergency leave was motivated by his requests for a union representative or his filing grievances.¹⁰ Assuming, for example, that Thompson was really fired for his confrontation with Sene over the liquid in the work area, Thompson's conduct in that incident was not protected by Section 7.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹¹

ORDER

The complaint is dismissed.

Dated, Washington, D.C. June 20, 2024

¹⁰ This case is distinguishable from *Electrolux* 368 NLRB No 34 (2019). Even if I were to find some of Respondent's reasons for Thompson's discharge pretextual, a non-pretextual reason, his attendance, was established. In *Electrolux*, once the reasons given for the employee's discharge were found to be pretextual, no non-pretextual reason remained.

¹¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.